

N.D.A.G. Letter to Marion (Nov. 25, 1985)

November 25, 1985

Mr. James Marion
North Dakota Department of
Parole and Probation
P. O. Box 5521
Bismarck, ND 58502-5521

Dear Mr. Marion:

Thank you for your letter of October 30, 1985, regarding the determination of prison sentences pursuant to the mandatory sentencing provisions of N.D.C.C. § 12.1-32-02.1, and good conduct sentence reduction provisions of N.D.C.C. § 12-54.1-01.

The determination of a prisoner's "good time" based upon the total confinement portion of his sentence appears to conform to the language and intent of N.D.C.C. §12-54.1-01. With respect to a non-mandatory sentence, you indicated that the total confinement portion of the sentence is used for figuring good time. There is no statutory basis for figuring good time any differently for a mandatory sentence than a non-mandatory sentence.

Regarding mandatory sentences, N.D.C.C. § 12.1-32-02.1 provides, in part, as follows:

12.1-32-02.1. MINIMUM PRISON TERMS FOR ARMED OFFENDERS. Notwithstanding any other provisions of this title, minimum terms of imprisonment shall be imposed upon an offender and served without benefit of parole . . . (Emphasis added.)

If a mandatory sentence is imposed, the offender cannot be paroled until he has been incarcerated for the mandatory period of either two or four years, depending on the offense. Good time can, however, cause a mandatory sentence to expire prior to the end of the two or four year mandatory period. Because the good time provisions of N.D.C.C. § 12-54.1-01 are included in a different title than the mandatory sentencing provisions of N.D.C.C. §12.1-32-02.1, the mandatory sentencing guidelines do not take precedence over the good time provisions and the statutes operate independently.

In conclusion, where a mandatory sentence has been imposed, good time should be figured based upon the total confinement portion of the sentence rather than the mandatory portion of the sentence. Furthermore, it is possible for a mandatory sentence reduced by good time to expire and an offender to be released prior to the end of the mandatory period.

I hope this information will be useful to you. If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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